

1 SHEILA POLK, COUNTY ATTORNEY
2 JEFFREY G. PAUPORE, SBN 007769
3 STEVEN A. YOUNG, SBN016838
4 Deputy County Attorney
5 YCAO@co.yavapai.az.us
6 Attorneys for STATE OF ARIZONA

2012 FEB 27 PM 4:06

V REISINGER

7
8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

9 **IN AND FOR THE COUNTY OF YAVAPAI**

10 **STATE OF ARIZONA,**

11 Plaintiff,

12 vs.

13 **STEVEN CARROLL DEMOCKER,**

14 Defendant.

CAUSE NO. P1300CR201001325

**STATE'S MOTION IN LIMINE TO
PRECLUDE EVIDENCE**

Assigned to Hon. Gary Donahoe

15 The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and
16 her deputy undersigned moves this court In Limine to preclude at trial evidence as outlined below.

17 This motion is supported by the following memorandum of points and authorities.

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **A. E-mails of James Knapp**

20 After the suicide death of James Knapp on or about January 7, 2009, his computer was
21 forensically analyzed. Several e-mails of James Knapp were recovered from this analysis. The
22 State moves to preclude at trial any e-mails purportedly from James Knapp on the basis that such
23 e-mails are hearsay and, therefore, are not admissible. Rules 801 and 802, Arizona Rules of
24 Evidence.
25
26

1 B. Sorenson Testing of Bicycle for DNA

2 On May 28, 2010 in CR20081339, the Court precluded the State from using the results of
3 the Sorenson Lab testing of the Defendant's bicycle. A copy of that order is attached hereto as
4 Exhibit 1. On July 29, 2011, the State filed its Motion for Admissible Evidence requesting that
5 the Sorenson Lab testing be admissible at trial in the present case. On December 22, 2011, this
6 Court denied the State's motion. A copy of the Court's Order dated December 22, 2011 is
7 attached hereto as Exhibit 2.
8

9 The State is requesting that this Court enter its order precluding the Defendant from
10 bringing in any evidence that the State violated the Court's Order regarding DNA testing on the
11 Defendant's bicycle. Since the State is precluded from introducing the results of this testing, it
12 would be unduly prejudicial to allow the Defendant to introduce evidence that the State had
13 violated a prior order regarding DNA testing. Rule 403, Arizona Rules of Evidence.
14

15 C. Motion to Strike Defendant's Catch All Disclosure of Witnesses

16 Defendant's revised witness list dated February 22, 2012 at #40 lists "(a)ny witnesses
17 disclosed by the State, whether or not removed by the State from its witness list." Such
18 disclosure does not comply with Rule 15.2(c)(1). Accordingly, it must be struck and the
19 Defendant directed to disclose with specificity the witnesses he intends to call at trial along with
20 their written and/or recorded statements.
21

22 **RESPECTFULLY SUBMITTED** this 27 day of February, 2012.

23 **Sheila Sullivan Polk**
24 **YAVAPAI COUNTY ATTORNEY**

25 By: Steven A. Young
26 **Steven A. Young**
Deputy County Attorney

Office of the Yavapai County Attorney

255 E. Gurley Street, Suite 300

Prescott, AZ 86301

Phone: (928) 771-3344 Facsimile: (928) 771-3110

1
2 **COPY** of the foregoing **emailed** this
3 27th day of February, 2012, to:

4 Honorable Gary Donahoe
5 Division 1
6 Yavapai County Superior Court
7 Via email to: gdonahoe@courts.az.gov

8 Division 1
9 Via email to: Cheryl Wagster: CWagster@courts.az.gov

10 Craig Williams
11 Attorney for Defendant
12 P.O Box 26692
13 Prescott Valley, AZ 86312
14 Via email to: craigwilliamslaw@gmail.com

15 Greg Parzych
16 Co-counsel for Defendant
17 2340 W. Ray Rd., Suite #1
18 Chandler, AZ 85224
19 Via email to: gparzlaw@aol.com

20
21
22
23
24
25
26
By: 

I think I

10

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

FILED

DATE: May 28, 2010

3:37 O'Clock P.M.

JEANNE HICKS, CLERK

BY: Rachel Roehe

Deputy

DIVISION: 6

JEANNE HICKS, CLERK

HON. THOMAS B. LINDBERG

By: Rachel Roehe, Deputy Clerk

CASE NO. P1300CR20081339

DATE: May 28, 2010

TITLE:

COUNSEL:

STATE OF ARIZONA

(Plaintiff)

Yavapai County Attorney (e)

(For Plaintiff)

vs.

STEVEN CARROLL DEMOCKER

(D-1)

John Sears (e)

Larry Hammond & Anne Chapman (e)

OSBORN MALEDON, P.A.

(For Defendant)

HEARING ON:

NATURE OF PROCEEDINGS

COURT REPORTER

Jury Trial / Pending Motions – Day 14

Sandra K Markham

START TIME: 9:29 a.m.

APPEARANCES: Joseph Butner, Deputy County Attorney
Jeff Paupore, Deputy County Attorney
Steven DeMocker, Defendant
John Sears, Counsel for Defendant
Larry Hammond, Counsel for Defendant
Anne Chapman, Counsel for Defendant

Court convenes with the presence of the Defendant and Counsel.

Under Advisement Ruling - Motion Re: Peter Barnett

IT IS ORDERED DENYING the motion in limine to prevent the State from calling Peter Barnett. The Court states that on a 403 basis it will preclude the State from bringing out the fact that he was hired by the defense.

Motion Re: Dismissal of Death Qualified Jury

Discussion takes place with regard to what the Court would tell the jurors.

Counsel argue the motion.

~*~*~*~*~*~ Recess – 11:05 a.m. ~*~*~*~*~*~

At 11:26 a.m., Court reconvenes with the presence of all parties previously present.

The Court **DENIES** the Defendant's motion for dismissal of the current jury panel without prejudice.

The State shall inform the Defense and the Court in writing no later than Tuesday regarding what, if any, aggravating circumstances will be alleged.

Discussion takes place with regard to the Defense possibly seeking a special action.

Defense Counsel requests expedited transcripts of all of the *voir dire*. The request is **DENIED**.

Motion Re: Sanctions / Sorensen Lab Testing

Counsel argue the motion.

The Court precludes the use of the results of that testing, having found that those actions described were in violation of the Court's orders with regard to disclosure of DNA evidence where the DNA evidentiary items were consumed. Though the seat of the bicycle may remain for testing, the Court finds it to be insufficient given the nature of the Court's understanding of the DNA testing that was accomplished and would have to be accomplished in this stage of the proceedings. The Court finds that there was a discovery violation and violation of the Court's orders. The Court will preclude the use of that testing and argument.

The Court states that it still has the financial sanctions issue under consideration as part of the other motion. That part of the argument is taken under advisement in addition to the other motion for sanctions which is under advisement.

Discussion takes place with regard to scheduling and pending motions.

The Court **ORDERS** that the response to the motion regarding the anonymous email is due by Tuesday.

~*~*~*~*~ Recess - 12:02 p.m. ~*~*~*~*~

At 1:35 p.m., Court reconvenes with the presence of all parties previously present.

Motion to Modify Release Conditions

Defense Counsel requests to modify the Defendant's release conditions.

Counsel argue the motion.

IT IS ORDERED reducing the Defendant's bond to \$1,000,000 cash or surety with GPS monitoring. The formal order is signed this date.

Motion to Modify Visitation

Defense Counsel requests to modify the Defendant's release visitation schedule.

The Court states that if the motion is filed today, the deadline for response will be at 5:00 p.m. on Tuesday.

Motion Re: Computer Searches

Counsel argue the motion.

The Court amends its previous order so long as there is a viewing date or search date within two months prior to the death of Ms. Kennedy. The Court does not find that the danger of unfair prejudice is substantially greater than the probative value.

With regard to the partial picture, if the witnesses can establish that it was viewed on or before June 1, the Court will allow it to come in.

15.6 Motion

Counsel argue the motion.

The Court **GRANTS** the request and will allow the State to use this late disclosed evidence.

Rule Excluding Witnesses

Counsel discuss issues with regard to the rule excluding witnesses.

The Court states that if a witness disclosed for purposes other than the guilt and innocence phase, they are not covered by the rule excluding witnesses and may be in the courtroom.

The Court confirms its previous orders with regard to DNA experts and other expert witnesses.

Preliminary Jury Instructions

Court and Counsel discuss Preliminary Jury Instructions.

~*~*~*~*~ Recess – 2:41 p.m. ~*~*~*~*~

At 2:55 p.m., Court reconvenes with the presence of all parties previously present.

Court and Counsel continue to discuss Preliminary Jury Instructions.

The Court requests that Counsel email the Judge directly with proposed modifications to the instructions.

Scheduling / Jury Issues

Discussion takes place with regard to scheduling and jury issues.

The Court will require both sides to give an indication to the other side with regard to the identification of witnesses for the next two or three days.

Counsel for both sides request an order making all of their subpoenas continuing subpoenas so that they do not need to be reissued. The Court **ORDERS** that the subpoenas that have been issued are ongoing and continuing subpoenas. The Court states that it would sign a formal order for each side if needed.

Defense Counsel requests to have the transcript of this morning's proceedings expedited. The Court approves the expedited preparation of the transcript. The Court would approve any limitations agreed upon between the Court Reporter and Counsel subject to any required approval from other agents of the government that may be necessary according to local practice.

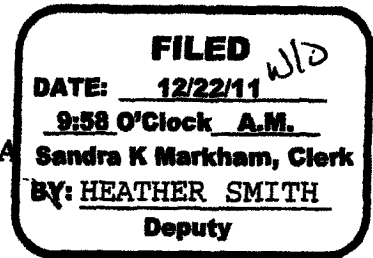
The Court stands at recess until 8:15 a.m. on Wednesday, June 2, 2010.

END TIME: 3:37 p.m.

cc: VS (e)
Dean Trebesch (Contract Administrator) (PD) (e)
Division 6 (Under Advisement)
YCSO (e)
John Napper, Counsel for Renee Girard (e)
Christopher DuPont, Trautman DuPont PLC (e),
Counsel for Victims Charlotte and Katherine DeMocker

Exhibit 2

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI



DIVISION: VISITING JUDGE
HON. GARY E. DONAHOE
CASE NO. P1300CR201001325

SANDRA K MARKHAM, CLERK
BY: HEATHER SMITH, DEPUTY CLERK
DATE: DECEMBER 22, 2011

TITLE:
STATE OF ARIZONA
(Plaintiff)

vs.

COUNSEL:
Yavapai County Attorney (e)
(For Plaintiff)

STEVEN CARROLL DEMOCKER
(Defendant) (D-1)

Craig Williams (e)
Greg Parzych (e)
(For Defendant)

HEARING:
Status Conference/Oral Argument

COURT REPORTER:
Heidi Callahan

START TIME: 9:58 a.m.

APPEARANCES: Jeff Paupore, Counsel for State
Craig Williams Counsel for Defendant
Greg Parzych, Co-Counsel for Defendant
Steven Carroll Democker, Defendant in custody
James J. Belanger present with John Sears

This is the time set for a hearing on all pending motions. The Court provides copies of his notes to Counsel.

The Court addresses and Counsel discuss the States Motion for Deposition of John Sears.

IT IS ORDERED taking the State's Motion for Deposition of John Sears under advisement.

Next, the Court hears arguments regarding Defendant's Motion to Dismiss for Prosecutorial Misconduct or, in the Alternative, Motion to Disqualify the Yavapai County Attorney's Office.

Counsel Craig Williams addresses the Court and requests an Evidentiary Hearing if Court is inclined to deny the motions.

IT IS ORDERED denying both Defendant's Motion to Dismiss for Prosecutorial Misconduct and Defendant's Alternative Motion to Disqualify the Yavapai County Attorney's Office.

Counsel for Defendant, Williams requests a stay to allow him to file a special action with the Court of Appeals. Although the Court does not feel a stay is necessary at this time, **IT IS ORDERED** denying the motion for a stay.

The Court addresses the Motion for Change of Venue.

Counsel for Defendant, Craig Williams, addresses the motion.

IT IS ORDERED denying the Motion for Change of Venue without prejudice to Defendant's right to renew it in the event a qualified jury panel cannot be selected by the Court.

The Court addresses Defendant's Motion to Sever Counts.

Counsel for Defendant, Greg Parzych, addresses the Court.

For the reasons stated on the record, **IT IS ORDERED** denying Defendant's Motion to Sever Counts.

The Court addresses the State's Motion to Amend Indictment and notes that there is no opposition. Therefore, **IT IS ORDERED** granting the State's Motion to Amend the Indictment.

The Court addresses the State's Motion Pursuant to Rule 9.3. Counsel for State has filed a motion to withdraw the motion; therefore, the motion is deemed withdrawn.

The Court addresses Defendant's Motion for Rule 15.9 Re-appointment of Greg Curry and Navigant Consulting.

Counsel for Defendant, Mr. Parzych, addresses the motion.

IT IS ORDERED granting Defendant's Motion to Re-appoint Greg Curry and Navigant Consulting. If the Public Defender will not accept this minute entry as the Court's order, counsel for Defendant shall submit a form of order to the Court for signature.

State requests that the counsel be allowed to copy the Court with any filings by email to allow the Court to receive the documents in a timely matter. Court will look into the request.

Court addresses the Motion *in Limine* Precluding Character Evidence in the death of James Knapp.

Counsel for the State argues the motion as does Craig Williams for Defendant.

For the reasons stated on the record, **IT IS ORDERED** denying the State's Motion Precluding Character Evidence in the Death of James Knapp without prejudice to the State's right to make appropriate objections to particular items of evidence that may be offered.

Court addresses the Defendant's Request for a Deposition of Mike Sechez and Defendant's Request for a Deposition of Detective Doug Brown.

IT IS ORDERED that Defendant's Request for a Deposition of Mike Sechez and Defendant's Request for a Deposition of Doug Brown are both **DENIED**, but the Court orders both witnesses to appear for an interview on the topic of how DNA sample #603 got under the fingernails of the victim. Neither witness is required to speculate, guess or offer any opinions on the subject if they have no foundation for it.

The Court addresses Defendant's Request for a Deposition of Dr. Phil Keen.

IT IS ORDERED denying Defendant's Request for a Deposition of Dr. Phil Keen, but ordering Dr. Keen to appear for an interview. The fee to be paid to Dr. Keen should be resolved by the indigent defense administrator and Dr. Keen.

Court addresses State's Motion for Admissible Evidence.

IT IS ORDERED denying the State's motion as to the Sorenson testing for bicycle DNA. The balance of the motion is **DENIED** without prejudice to either party's right to file a brief (no more than six pages) motion for reconsideration of any prior ruling setting forth the changed circumstances or new information that the Court should consider. The Court requests that attached to the motion shall be a copy of the prior ruling and the transcript, if any, of any argument or hearing regarding the ruling.

Court addresses the State's Request to Determine Admissibility of Statements.

Court and counsel discuss the motion. Based on the information received, the Court finds that it is not necessary to conduct a voluntariness hearing. The voluntariness of the statements Defendant made during the first interview is not contested and the court has previously ruled that Defendant's statements made during the second interview were voluntary. The issue is whether the statements during the free talk interview can be used against Defendant in trial. Therefore, the Court deems the State's Request to Determine Admissibility of Statements to be moot. Counsel may brief the issue of the admissibility of the free talk statements to the Court. Whichever Counsel files the motion shall submit a copy of the relevant portions of the free talk transcript attached to the motion for the Court's review.

Counsel discuss State's Motion for *In Camera* Inspection of Records. Mr. Paupore advises that Court that the motion was filed because a public records request was made for the photographs. Counsel for Defendant objects to the release of any photographs prior to the start of trial.

IT IS ORDERED directing the State to deny the public records request for the reasons stated on the record with the main reason being the Court's concern regarding picking an impartial jury panel.

Court and Counsel address the trial schedule. The Court suggests a trial date of February 20, 2012.

Counsel Parzych addresses the Court regarding a capital trial he is scheduled to take part in in Maricopa County with Judge O'Conner in February, 2012.

Court takes a brief recess at 11:39 a.m.

Court resumes at 11:52 a.m.

Counsel Williams requests an April 11, 2012 trial date. He always waives time.

The Court is informed that not all interviews have been conducted. The Court is advised that there are a number of expert witnesses, some who are out of state, that still need to be interviewed.

Counsel for the State will be ready for trial when the date is set; however, State's counsel does not want to force Defendant to begin in February if he is not ready.

The Court suggests a Monday through Thursday trial schedule. The Court is advised that trials in Prescott are generally held Tuesday through Friday, with Monday being used for law and motion day.

Counsel for State will need approximately 32 trial days. Counsel for Defendant will need approximately 16 to 20 trial days. Both Counsel indicate the number of trial days are estimates only at this point.

The Court notes that this case will be tried in Prescott in this Courtroom, Division 1.

The Court will select a trial date and will generate a minute entry. The Court will adjust the trial deadlines if necessary.

Cheryl will email counsel to inform them as to whether or not it would be appropriate to email the Court directly or whether they should email through Cheryl only.

Counsel for Defendant, Mr. Parzych, advises the Court that he will be unavailable the week of March 12, 2012.

The Court will contact Judge O'Conner regarding Mr. Parzychs' trial conflict.

The Court will also consider whether or not the trial days should be Monday through Thursday or Tuesday through Friday.

CC: Hon. Gary E. Donahoe (e)

YCSO – Detention Records (e)

Victim Services (e)

Steptoe & Johnson (e)

Melody Harmon (e)

De La Torre Law Office (e)

William Culbertson (e)

James J. Belanger, 2800 N. Central Avenue, Ste 1200, Phoenix, AZ 85004

END TIME: 12:09 p.m.